

Policy and Procedures

Chapter (52-1)

Subject:

Professional Standards

Issuing Authority: Robert Bongiorno Chief of Police

Signature: On File **Effective Date:**

June 18, 2013

General Considerations and Guidelines:

As society's designated representative to uphold its laws, the police officer is held to a higher standard than other citizens. A relationship of trust between the employees of this police department and the citizens of the community is essential to the successful accomplishment of law enforcement objectives. All police employees are expected to conduct themselves, whether on or off duty, in such a manner as to reflect favorably upon themselves and the department. It is the responsibility of every department member to promote this ideal.

The consistently high quality of this standard of conduct establishes and maintains the reputation of the department and encourages the support of the community for the police purposes and goals.

Professional Standards

The Professional Standards function may be delegated on a case by case basis to the Detective Bureau, Superior Officers, Administrative Sergeant or a trained officer designated by the Chief of Police or even performed by the Chief of Police. For the purposes of this Policy and Procedure, the term Professional Standards Unit will refer to any of the foregoing as appropriate. Likewise, the grammatical modifications should be inferred (such as the absence of an (Officerin-Charge) as a department's situation warrants.

The Professional Standards Unit is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the department depends on the personal integrity and discipline of each employee. To a large degree, the public image of this department is determined by how well it responds to allegations of misconduct against the department or its officers.

The prevention of misconduct is one of the primary responsibilities of the Professional Standards Unit. It does this by responding to allegations of misconduct against the police department and its employees. The Professional Standards Unit will be responsible for recording, registering, and controlling the investigation of complaints against employees; supervising and controlling the investigation of alleged misconduct within the department and maintain through a professional standards system where objectivity, fairness and justice are assured by intensive and impartial investigation and review. By conducting a periodic analysis of misconduct, the Professional Standards Unit helps to identify policy, training and supervisory practice that contribute to a climate in which misconduct occurs.

The responsibility for supervising, conducting, coordinating and maintaining the Professional Standards Unit of the department lies with the Chief of Police. He will assign the internal investigation to the designated personnel. All findings from the investigating officers will be prepared in writing and presented to the Chief of Police.

Allegations of misconduct, even when unfounded, stigmatize the officer individually. Unfortunately, vindictive individuals know this and may file frivolous complaints to get back at officers whom they dislike. This may adversely affect the officer's career, his/her family and his/her ability to function most effectively as a member of the department. The department's community policing efforts may likewise be jeopardized.

Since a professional standards investigation involves allegations against members of the department, it is essential that the process not only be lawful, but, to the extent allowed by law, confidential as well. This necessitates strict confidentiality and full adherence to procedure.

The objectives of a Professional Standards investigation are:

- Protection of the public;
- Protection of the employee;
- Protection of the Department;
- Correction of procedural training problems; and,
- Removal of unfit personnel.

All allegations or suspected violations of laws, ordinances, by-laws, department rules, regulations, policies, procedures and orders (verbal or written), must be investigated according to the procedures outlined for each.

These include:

- Alleged violations reported to the department's superior officers by other members of the department, or other governmental or law enforcement agencies, either orally or in writing;
- Alleged violations, observed or suspected, by department superior officers; and
- Citizens' complaints of alleged police misconduct which are made in person, by letter, by telephone, or anonymously, this includes complaints from detainees.

No complaint should be rejected solely because it is anonymous, as anonymous complaints can often be valuable source of information and should be considered on their individual merits. Care must be taken, however, that department employees are not subjected to unjust, frivolous, or capricious complaints.

Policy¹

It is the policy of the Bedford Police Department that all allegations of employee misconduct are appropriately investigated and promptly adjudicated; regardless of the source of such complaints (including anonymous complaints), through a regulated, fair, and impartial Professional Standards Program. Additionally, all reports or accusations made against members of the department, or the department in general, from all sources shall be completely investigated in order to ensure the integrity of the department and its members.

All aspects regarding the monitoring of Professional Standards will be performed diligently with fairness and integrity. A proper administrative system will not only provide for necessary corrective action, but will also protect employees from unwarranted and unjustified complaints. The Professional Standards system must determine whether or not such complaints are valid; and take appropriate action.

General Procedures

- The Officer-in-Charge of the station at the time the complaint is made shall be responsible for the efficient receiving and complete recording of any complaint of police employee misconduct made by a citizen in person or received by telephone. They will initiate the Intake Form (Form 52-1).
- A patrol officer or dispatcher that is contacted by a complainant shall direct that person to a supervisor. Where required (serious allegations of misconduct), a supervisor will be sent to meet in the field with such individual. Lesser allegations may be fielded over the phone if the person is not willing to come to the station. If there is no supervisor available, the person initially contacted shall attempt to secure sufficient information from complainant for the supervisor to follow up with the complainant.
- The utmost courtesy and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedure.

¹ 52.1.1

- This initial contact between a complaining citizen and police authorities is a most important stage in the complaint process as the complainant may be tense, angry and emotionally upset, and the potential for hostility is great.
- No person should be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later, unless exigent circumstances are present (IE. The Officer-in-Charge is tied up on an emergency call).
- In some cases a complaint can be resolved to the complainant's satisfaction at the time by the shift supervisor or the Officer-in-Charge of the station, in which case this fact should be reported in writing by the shift supervisor or Officer-in-Charge of the station and, if possible acknowledged in writing by the complainant. This immediate resolution can often be accomplished if the incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law or of the limitation of a police officer's authority. Under no circumstances will a justifiable complaint be refused, delayed, or otherwise be rejected in this manner. A justifiable complaint is a report of police officer misconduct.
- Once the complaint form is complete, the Officer-in-Charge shall forward the form to the Lieutenant for review. The Lieutenant shall forward the complaint form to the Chief and the Chief will enter the complaint into the appropriate Investigative Log. The decision to make a complaint a Professional Standards investigation will be that of the Chief of Police.
- If the substance of the employee misconduct warrants it, the Officer-in-Charge may place the employee on administrative leave for the remainder of their shift pending notification of the Professional Standards Unit and the Chief of Police. The employee shall only be relieved from duty otherwise at the direction of the Chief of Police in accordance with statutory and collective bargaining provisions.²

² 52.1.8

Origin of the Complaint:

A) In Person Complaints

Citizens making complaints in person should be directed to the Officer-in-Charge of
the station and should be requested to fill out the Intake Form (Form 52-1). They
should be requested to read over their completed report, to make any necessary
corrections or additions and sign their complaint. This includes complaints from any
prisoner, criminal defendant, on person on the street making such complaint or
alleging misconduct or mistreatment.

Note: Some citizens have difficulty in writing, may have limited reading skills, and may not be fluent in English. Officers should assist those persons in preparing a complaint form.

- If a complainant refuses to sign a complaint, a notation to that effect should be made on the complaint form.
- If the complainant is intoxicated or appears to be under the influence of drugs, the complaint will be received. However, the complainant should be re-interviewed promptly after becoming sober.
- Complaints from juveniles will be received. However, prompt contact should be made with the juvenile's parent(s) or guardian(s) after accepting such a complaint.

B) Telephone Complaints

 Citizens making complaints by telephone should be informed that their signed complaint is requested; however, no telephone complaint should be refused or rejected because the complainant does not wish to sign a complaint form or because they do not wish to be identified. The call should be directed to the Officer-in-Charge of the station who shall fill out Intake Form (Form 52-1) based on the information received.

C) Complaints Received by Mail

- If a complaint is received by mail, the allegations shall be incorporated in Intake Form (Form 52-1) and the original communication attached to it.
- If the information received is insufficient or incomplete, the complainant shall be contacted, if possible, and informed of the department complaint procedure and any necessary additional information obtained.

D) Departmental Complaints

• Formal departmental complaints against a department employee shall be initiated by the preparation of the Intake Form (Form 52-1)

E) Complaints from Governmental Agencies

 When are received or obtained from other governmental, this information shall be recorded on Intake Form (Form 52-1) and an investigation initiated in the usual manner.

Categories of Complaints

- The department has established guidelines regarding which categories of complaints will be handled and investigated by the Professional Standards Unit and which by a shift supervisor, as a part of routine discipline.
- The criteria determining the categories of complaints to be investigated by Professional Standards include, but are not limited to, allegations of:³
 - Corruption;
 - Brutality;
 - Use of excessive force;
 - Violation of civil rights;
 - Any firearm discharge which results in either property damage or physical injury;
 - Criminal misconduct; and
 - Any other matter directed by the Chief of Police
- Criteria for the assignment of an investigation to a Sergeant or department Lieutenants and the Chief of Police may include, but are not limited to such offenses as:⁴
 - Alleged rudeness;
 - Tardiness:
 - Minor cases of rule violations without adverse consequences such as neglect of duty, failure to supervise, or procedural violations; and,
 - Minor cases of insubordination.
- Reports of investigations performed by a Sergeant shall be forwarded and reviewed by the appropriate division Lieutenant and or the Chief of Police.⁵

³ 52.1.1(b)

⁴ 52.1.1(a)

Verification of Receipt

Every person making a complaint against a department member shall be entitled to receive an acknowledgment that their complaint has been received.⁶

Notification of the Chief

If a complaint is minor in nature, the Intake Form shall be completed by the person taking the complaint (agency or employee complaint) and follow the notification of the Chief as on Page 4 of this policy.

If the complaint is grave, complex or involve criminal activity, the Chief should be immediately notified by the person taking the complaint by phone (cell phone then home phone.) If the Chief cannot be reached by telephone an email should be sent by the person taking the complaint.

Investigation of Complaints

Preliminary Investigations:

The Officer-in-Charge or supervisor on duty when a complaint is made contemporaneously with the alleged incident shall conduct or arrange for a preliminary investigation and shall use the Preliminary Investigation Checklist (Form 52-2). Where the allegations are serious, especially those involving criminal activity, or the issues are complex, the Chief of Police should be contacted immediately for advice and possible response.

The preliminary investigation shall normally include, but not be limited to:

- Interview the complainant and any witnesses present or readily available;
- Identify or eliminate all involved police employees, if possible. This can be done using communication tapes/records, watch line-ups, car assignments, employee photographs, and immediate physical viewing if the allegation involves an on-duty employee;
- If warranted by the allegations, obtain photographs and/or chemical tests of accused employees;

⁵ 52.1.1(c)

⁶ 52.1.5(a)

- Record all personal information regarding the complainant and any witness including driver's license and Social Security numbers;
- Make a written record of the substance of the interviews.
- Ensure that the physical evidence is preserved or, at least, photographed;
- If injuries are obvious or alleged, ensure that the medical treatment is provided.
 Remember that ruling out injuries of both and civilians and employees is also important;
- Photographs at this stage are very valuable. Interview hospital personnel at this stage as the incident and treatment may be fresher in their minds. Obtain a medical release from the complainant and any witnesses who may also have been injured.
- Collect all documents regarding the incident. It is easier to preserve the communications tapes as this stage of the investigation that attempting to hunt them down later. This is also true of the computer-aided printouts.
- The supervisor conducting the preliminary investigation shall forward the findings to the appropriate lieutenant and the Chief of Police.
- Supervisors should not have accused employees prepare a special and separate report regarding the incident or a response to the complaint, other than those normally prepared such as the incident, offense or arrest report.

Follow-up Investigation:

The designee of the Chief of Police shall be responsible for conducting Professional standards investigations using the Internal Investigation Report (Form 52-3) and report directly to the Chief of Police.⁷

In conducting investigations of alleged employee misconduct, all appropriate investigations techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee. A Professional Standards administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.

• Upon orders of the Chief of Police or his designee, an employee may be required to submit to a medical or laboratory examination, at the department's expense. This examination must be specifically directed and narrowly related to a particular professional standards investigation being conducted by the department.⁸

⁷ 52.1.2

⁸ 52.1.7(a)

• The affected employee shall be provided a written statement of the allegations against him/her by the Notification of Charges/Allegations (Form 52-4); such notification and allegations will consists of employee rights and responsibilities, and will be made in a timely fashion consistent with the nature and seriousness of the offense/investigation.⁹

Note: If the employee was not notified by order of the Chief of Police, they must receive written notification prior to any interrogation or administrative or criminal hearing.

- The designee of the Chief of Police shall be responsible for providing the Chief of Police and Lieutenants with status reports on the progress of the investigation every seven (7) days. These reports contain all pertinent information relating to the progress of the investigation.
- If the substance of a complaint, if proven, would be of grave nature or is an accusation of a serious crime and immediate action is deemed necessary, the Chief, or the superior officer designated by the Chief, shall be notified forthwith in order that an investigation can be initiated without delay. 10
- Before a department employee is questioned or directed to submit a report regarding a
 complaint, and unless the Chief determines that disclosure might jeopardize the
 investigation, such employee shall be issued a written statement of the allegation and
 in either case the employee will be advised of their rights and responsibilities relative
 to the investigation.
- If possible, the complete interview with an employee in all Professional Standards administrative investigations should be recorded electronically or by a qualified stenographer.
- A Professional Standards administrative investigation may inquire into a department employee's on-duty or off-duty conduct if such inquiry is reasonably and directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or reflects discredit on the department.
- A police officer may also be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation, and a refusal can be the basis for an additional disciplinary charge or the refusal to obey a lawful order. Such a line up should be fairly constructed and not be unfairly suggestive and should not be used for an administrative investigation where criminal charges are contemplated.¹¹

⁹ 52.1.6

¹⁰ 52.1.3

¹¹ 52.1.7(b)(c)

- A police officer's personal property, including their home, car, and other property, is
 protected from unreasonable search and seizure under the Massachusetts Constitution,
 and it is possible that any evidence illegally obtained especially by officers of this
 department, may not be used as evidence is an administrative proceeding. Evidence
 obtained by other police agencies, however is generally admissible in department
 disciplinary proceedings.
- Department property furnished to the officer, such as desks, lockers, cell phones or vehicles, since it is clearly understood in advance that an officer has "no expectation of privacy," may be searched without a warrant.
- A police officer may be compelled to submit a financial disclosure statement as part
 of a professional standards investigation provided such a statement is material to the
 investigation being conducted.¹²
- Under the provisions of G.L. c. 149, s. 19B, police officers may be required to submit to a polygraph or lie detector test in connection with a Professional Standards investigation if such test is conducted by a law enforcement agency in the course of a department investigation of criminal activity, and such circumstances, officers may face disciplinary action for refusal. 13

Department Disciplinary Action:

The Rules and Regulations list several methods of discipline to be administered in a fair and impartial manner for infractions of department rules, regulations, policies and procedures. These include counseling, training, oral reprimand, written reprimand, suspension, demotion and dismissal.

¹² 52.1.7(d)

¹³ 52.1.7(e)

Criminal Investigations:

If it is determined, generally after a preliminary investigation that allegations against a department employee could result in a criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights. The Chief of Police shall be notified immediately by the Officer-in-Charge when it appears that an officer has engaged in criminal activity.

- Prior to being questioned regarding alleged personal involvement in criminal activity, a department employee shall be given the Miranda Warnings, including the right to have an attorney present during any such questioning, prior to custodial interrogation. Department employees will also be offered to have the interview recorded by video.
- After Miranda warnings have been given, any voluntary statement made thereafter could be admissible in a criminal proceeding, and it may otherwise be used for departmental disciplinary purposes.
- A department employee who is being questioned about alleged personal involvement in criminal activity which could result in a criminal prosecution, cannot be discharged or otherwise, solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity. However, as discussed below, an employee may be compelled to answer questions narrowly drawn and related to their on or off duty conduct or fitness of duty, and may be disciplined (including discharge) for failure to answer truthfully.
- All department employees, when requested by the Chief of Police, or by a superior
 officer designated by the Chief of Police, must respond fully and truthfully to all
 questions regarding their performance of official duties or their off-duty misconduct
 which affects their fitness or ability to remain in the police service, and any failure to
 answer completely and truthfully to such inquires may be punished by appropriate
 disciplinary action, including dismissal from the department.
- The official conducting the interrogation must, at the time of the interrogation, specify if the employee or their counsel requests, the precise repercussions that will result if the employee fails to respond.
- When a department employee, after declining to do so voluntary by invoking the
 privilege against self-incrimination, is ordered to submit a report or to answer
 questions under a threat of the penalty of discipline, that employee shall receive
 transactional immunity from criminal prosecution for any offenses to which the
 compelled testimony relates.

Any Professional Standards investigation which may, or does, result in criminal
charges being brought against an officer shall require the District Attorney's or
Attorney General's office to be appraised of the case for the purpose of advising on
legal issues and ultimate prosecution, if necessary contact shall be made through the
appropriate Division Lieutenant.

Transactional Immunity:

The Supreme Judicial Court has held that Article 12 of the Massachusetts Declaration of Rights requires "transactional" immunity to supplant the privilege against self-incrimination when a public employee is being compelled to answer questions concerning possible criminal activities connected with their employment. Transactional immunity grants "immunity from prosecution for offenses to which compelled testimony relates."

If the questions specifically, directly, and narrowly relate to the employee's performance of official duties or their off-duty conduct which affects their fitness or ability to remain in the police service, and if such employee's is informed the they will receive transactional immunity from criminal prosecution, they **must** answer or face disciplinary action, including dismissal from the department, for refusing to answer such questions.

If the employee so insists, the Chief shall secure a written grant of transactional immunity from the Attorney General's Office. An employee may decline to answer questions in a criminal investigation until such documentation is received.

Double Jeopardy:

No double jeopardy exists when a department employee is found not guilty in court of criminal charges and is the found guilty of departmental charges after a disciplinary hearing, as then department charges are administrative in nature and can be sustained by a "preponderance of the evidence" rather that criminal court standard of "beyond a reasonable doubt"

Employee Rights:

When a reasonable person in the officer's situation might reasonably believe that their answers could lead to discipline, they are entitled to have a union representative present, so long as the inquiry is not delayed unreasonably. (In conducting Professional Standards administrative investigations, in the absence of a requirement in a collective bargaining agreement, there is no legal obligation for the police department employees with an opportunity to consult with an attorney before being questioned on work-related matters.)

However, a request for an attorney to be present will be granted if the investigation is not thereby unduly delayed.

- Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
- Any interview or questioning should not be prolonged without reasonable rest periods and opportunity for meals and such other personal necessities as are reasonably required.
- A department employee shall not be improperly harassed or threatened during this period of questioning.

Case Status:

- Any Professional Standards investigation must be commenced immediately upon receipt of the complaint and must be completed within 30 days.¹⁴
- If extenuating circumstances preclude completion within 30 days, the Officer-in-Charge of Professional Standards shall request an extension from the Chief of Police in writing, and provide written notification to the employee (if previously notified of the complaint and investigation) and complainant of the delay.
- If the investigation is not completed within 30 days, the complainant shall be provided a progress report every 30 days until the completion of the investigation. ¹⁵
- The designated investigators will submit a monthly report to the Chief on the status of all open files.

¹⁵ 52.1.5(b)

¹⁴ 52.1.4

Withdrawn Complaints:

If during the progress of a Professional Standards investigation, the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.

Even though a complaint is withdrawn, a full report of the investigation to date should be prepared for the Chief of Police and the approval obtained for the termination of the continuation of the investigation.

Any attempt, directly or indirectly, on the part of a department employee to obstruct any Professional Standards investigation or to threaten or persuade any complainant to withdraw or abandon their complaint, is prohibited and will be treated most severely.

The Chief may continue the investigation, even if the complaint was withdrawn, if he feels it is in the best interest of the organization.

Report of Investigation¹⁶

At the conclusion of any administrative investigation, a full written report shall be prepared for submission to the Chief of Police, which shall include the following:

- The original complaint report;
- Any additional statements taken from the complainant or statements obtained from the witnesses;
- Any statements made of reports submitted by the department employee under investigation;
- A summary of all evidence gathered;
- Any mitigating circumstances; and
- An evaluation of the complaint, and a conclusion of facts, as well as a definitive statement as to whether the charges made by the complainant were:
 - o **Sustained**: The complaint was valid and supported by sufficient evidence;
 - **Not Sustained**: There was inadequate or insufficient evidence to either prove or disapprove the complaint;
 - o **Unfounded**: The allegations were baseless and without foundation; or
 - Exonerated: The complaint was unjustified or unwarranted as the actions of the accused department employee were in compliance with law or in accordance with department policy and procedure.
 - o **Filed**: The case is placed on file with no further action.

When conducting the investigation, the officer's in charge of conducting the investigation will limit their report to the collection of facts. It is preferable to leave the determination or adjudication of violations to a supervisor and the imposition of appropriate discipline to the Chief of Police. Recommendations for discipline will not be placed in the report by the investigator as the determination for discipline will be made by the Chief of Police.

Upon receipt of the report of investigation, the Chief of Police should take further action as is necessary based upon findings in a particular case.

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¹⁶ 52.1.9

The subject of the investigation shall be promptly notified of the final results of the investigation. If the department employee is cleared of the charges made, they shall be officially exonerated in writing.

Every person who has filed a complaint against an employee shall be notified promptly as to the final conclusion of fact, personally if possible or otherwise by mail.

If a disciplinary hearing is deemed necessary, the complainant shall be notified that their testimony will be required at the time.

Confidentiality of Professional Standards¹⁷

In order to ensure that the individual rights of officers who are subject of a Professional Standards investigation are protected all materials relevant to that investigation shall be kept strictly confidential and under lock and key by the investigator designated by the Chief of Police. All completed investigations shall be kept strictly confidential and under lock and key by the Chief of Police in a secure file cabinet in archive storage room. Only the Chief of Police or his designee(s) shall have access to this locked file cabinet in the storage room.

Professional Standards investigators should note in their reports any instances where witnesses refused or were reluctant to speak with them unless they were assured that their statements would be kept confidential, at least to the extent legally allowed.

No statement regarding a Professional Standards investigation will be made or issued to the public or media unless the charges have been sustained and action has been taken or initiated against the officer or employee.

A copy of the completed investigation summary should be kept in a summary file in the office of the Chief of Police and will be the only source of public information about citizen complaints, other that the statistical log which may be prepared and published annually by the Chief of Police.

¹⁷ 52.1.10

Annual Report¹⁸

The Chief of Police should publish, in the Department's Annual Report, a summary of complaint statistics (both citizen complaints and Professional Standards), indicating the number of complaints filed (by the type of complaint), and the outcome of the investigations undertaken (by outcome classification). In addition to contacting the agency directly, the Annual Report should outline the procedures the public may follow in filing a complaint.

Supervisor Roles:

The following is an outline by rank and command of the authority or Superior Officers to discipline their subordinates:

Sergeant:

Has the authority to counsel, evaluate, praise and recommend for recognition. He also has the authority to verbally reprimand, relieve from duty (if officer is found drinking an alcoholic beverage while on duty, reporting to work while intoxicated, refusal to obey a direct order, or criminal conduct.) and recommend a formal written reprimand or more serious disciplinary action, as is deemed appropriate.

Lieutenant:

Has all of the listed authority as a Sergeant, and additionally may issue written reprimands with the approval of the Chief of Police.

Chief of Police:

Has all listed authority as a Sergeant and Lieutenant, and also has the authority in accordance with all applicable law, Department of Personnel Administration Rules, and the Town of Bedford By-Laws, to promote, impose punishment duty, decrease annual leave, and suspend.

Any Superior Officer who is directed to act in the capacity of a rank above their ordinary or usual rank shall, for that necessary time, possess the authority of that rank.

¹⁸ 52.1.11 and 52.1.12

Professional Standards Policy Information

History June 18, 2013 – Replaces Professional Standards Policy (Chapter 52-1) issued

July 14, 2010

July 14, 2010 – New Issue

Review Date This policy is scheduled for review every two years and updated as necessary.